

**REMARKS**

Reconsideration of this application in light of the present amendment and remarks is respectfully requested. In the outstanding office action, claims 1-10 are pending in the application. Claims 1-10 are rejected.

Claims 1-10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (U.S. 5,884,185) in view of Henry Jr. et al. (U.S. 6,560,453 B1).

**RESPONSE TO THE OFFICE ACTION**

In response to the office action, claims 1, 2, 8, 9, 10 were amended. Claims 3, 4, 5, 6, and 7 were unchanged.

**Claim Rejections - 35 U.S.C. § 103(a):**

Applicants respectfully request reconsideration of the rejection of Claims 1-10 under 35 U.S.C. 103(a) as being unpatentable over Kim (U.S. 5,884,185) in view of Henry Jr. et al. (U.S. 6,560,453 B1) as herein amended.

Independent claim 1 has been amended to clarify that the transmitter is “responsive to the housing position.” Independent claim 2 has been amended to clarify that the transmit duty cycle which the transmitter operates at is changed using a relative position of two portions of the housing. Support for these amendments can be found on page 5, line 20 to page 6, line 2. Applicant respectfully submits that Kim (U.S. 5,884,185) in view of Henry Jr. et al. (U.S. 6,560,453 B1) does not anticipate the invention recited in amended Claims 1 and 2. Specifically, neither Kim (U.S. 5,884,185) nor Henry Jr. et al. (U.S. 6,560,453 B1) taken singly or in combination anticipate a transmitter which modifies its transmit duty cycle based on the position of the housing. Applicant respectfully disagrees with the examiner’s characterization that the monitoring function described in Kim anticipates the transmitting on various duty cycles recited in amended claims 1 and 2. Passive monitoring of a channel is not substantially similar to active transmitting. In fact, the device of the Kim patent would only provide for transmitting when the device wakes up. (i.e. the housing is opened) During standby, no transmit operation is possible. Further, Applicant respectfully disagrees with the examiner’s characterization that the Henry patent anticipates changing the transmit duty cycle dependent on the position of the housing. Specifically, the Henry patent describes (col. 1 starting at line 60) that an SCI parameter is programmed to a set value for use by the device. The SCI value is not changed as the housing position is changed. Since claims 1 and 2 include subject matter that constitute patentable subject matter, Applicants respectfully submit that claims 1 and 2 are in proper condition for allowance and request that claims 1 and 2 may now be passed to allowance.

Applicant respectfully requests reconsideration of the rejection of claims 3-7 under 35 U.S.C. 103(a) as being unpatentable over Kim (U.S. 5,884,185) in view of Henry Jr. et al. (U.S. 6,560,453 B1). Applicants submit that claims 3-7 are allowable over the cited references based

on their dependencies upon amended claim 2 which claim was shown to be allowable above. In addition, Applicants submit that claims 3-7 are independently patentable because they include limitations not taught or suggested by the cited references. Therefore, since claims 3-7 introduce additional subject matter that, particularly when considered in the context of the recitations of amended claim 2, constitute patentable subject matter, Applicants respectfully submit that claims 3-7 are in proper condition for allowance and request that claims 3-7 may now be passed to allowance.

Independent claims 8 and 10 have been amended to clarify that the method includes “determining a current position is the first position of the plurality of positions of the at least one portion of the two or more portions of the housing; in response to the current first position, setting a current transmit duty cycle of the transmitter to operate at the first one of the stored transmit duty cycles; changing the position of the at least one portion of the two or more portions of the housing to the second position; and in response to the second position, setting the transmitter to operate at the second transmit duty cycle.” Support for these amendments can be found on page 5, line 20 to page 6, line 2. Applicant respectfully submits that Kim (U.S. 5,884,185) in view of Henry Jr. et al. (U.S. 6,560,453 B1) does not anticipate the invention recited in amended Claims 8 and 10. Specifically, neither Kim (U.S. 5,884,185) nor Henry Jr. et al. (U.S. 6,560,453 B1) taken singly or in combination anticipate a method of changing the transmit duty cycle of a transmitter when the position of the housing changes. Applicant respectfully disagrees with the examiner’s characterization that the monitoring function described in Kim anticipates the transmitting on various duty cycles recited in amended claims 8 and 10. Passive monitoring of a channel is not substantially similar to active transmitting. In fact, the device of the Kim patent would only provide for transmitting when the device wakes up. (i.e. the housing is opened) During standby, no transmit operation is possible. Further, Applicant respectfully disagrees with the examiner’s characterization that the Henry patent anticipates changing the transmit duty cycle dependent on the position of the housing. Specifically, the Henry patent describes (col. 1 starting at line 60) that an SCI parameter is programmed to a set value for use by the device. Applicant further respectfully disagrees with the examiner’s characterization that the Henry patent (col. 5) describes changing the transmit duty cycle based on the housing position. On the contrary, the Henry patent describes changing the SCI value based on an operating environment which is manually set. For example, if a high

performance is desired, the SCI value is set to an associated value. The SCI value is not changed as the housing position is changed. Since claims 8 and 10 includes subject matter that constitute patentable subject matter, Applicants respectfully submit that claims 8 and 10 are in proper condition for allowance and request that claims 8 and 10 may now be passed to allowance.

Applicant respectfully requests reconsideration of the rejection of claim 9 as herein amended under 35 U.S.C. 103(a) as being unpatentable over Kim (U.S. 5,884,185) in view of Henry Jr. et al. (U.S. 6,560,453 B1). Applicants submit that claim 9 is allowable over the cited references based on its dependency upon amended claim 8 which claim was shown to be allowable above. In addition, Applicants submit that claim 9 is independently patentable because it includes limitations not taught or suggested by the cited references. Therefore, since claim 9 introduces additional subject matter that, particularly when considered in the context of the recitations of amended claim 8, constitutes patentable subject matter, Applicants respectfully submit that claim 9 is in proper condition for allowance and request that claim 9 may now be passed to allowance.

For the foregoing reasons, applicants respectfully request that the above rejections be withdrawn.

Inasmuch as this amendment distinguishes all of the applicants' claims over the prior art references, for the many reasons indicated above, passing of this case is now believed to be in order. A Notice of Allowance is earnestly solicited.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim, unless applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If the Examiner believes that there are any informalities which can be corrected by Examiner's amendment, or in the event that the Examiner deems the present application non-allowable, a telephone call to the undersigned at (954) 723-6449 is respectfully solicited.


Authorization is hereby given to charge any fees, or credit overpayment necessitated by actions taken herein to Deposit Account 50-2117.

Respectfully submitted,

SEND CORRESPONDENCE TO:

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